

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 20-cv-0287 CG/SMV

\$13,500.00 in United States Currency,

Defendant.

**ORDER DIRECTING CLAIMANT'S ATTORNEY TO FILE AN ENTRY OF
APPEARANCE OR CLAIMANT WILL BE DEEMED PRO SE**

THIS MATTER is before the Court on Plaintiff's Motion to Compel [Doc. 7], filed on October 22, 2020. The Claimant has filed no response. Before ruling, the Court must ascertain whether the Claimant is represented by counsel or proceeds pro se. This question is critical so that the Court can determine whether service of the underlying discovery requests and instant Motion was adequate.

The United States initiated this forfeiture action on March 31, 2020. [Doc. 1]. Claimant Lucas Alves filed a Verified Claim of Interest on May 14, 2020, and an Answer on May 18, 2020. [Docs. 4, 5]. Claimant filed a duplicate Claim of Interest on June 29, 2020. [Doc. 6]. None of Claimant's filings includes any contact information for him. [Docs. 4, 5, 6]. However, each filing was mailed in an envelope bearing a return address for an attorney in St. Petersburg, Florida named Peter S. Herrick. [Doc. 4] at 3; [Doc. 5] at 5; [Doc. 6] at 3. Mr. Herrick has not formally appeared in this action.

The United States attempted to propound discovery requests on Claimant by sending them to Mr. Herrick on July 8 and 17, 2020. *See* [Doc. 7] at 1. Apparently, the Claimant never

responded to the discovery requests. *See* [Doc. 7]. On October 22, 2020, the United States filed the instant Motion to Compel, moving the Court to compel Claimant to answer the discovery requests. *Id.* at 1 (citing Fed. R. Civ. P. 37(a)(3)(B)). The United States attempted to serve the Motion on Plaintiff by sending it to Mr. Herrick. *Id.* at 3. Neither Claimant nor Mr. Herrick filed any response to the Motion.

Before reaching the Motion to Compel, the Court must determine whether Mr. Herrick represents Claimant. This is critical because if Mr. Herrick represents Claimant, Mr. Herrick will be required to enter an appearance, and court papers may be served on him. However, if Plaintiff proceeds pro se, he will have to complete a CM/ECF Pro Se Notification Form to provide his contact information, *see* D.N.M.LR-Civ. 83.6, and the manner by which he elects to be served.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that **no later than December 14, 2020**, Mr. Herrick enter an appearance in this action or Claimant will be considered proceeding pro se. If Claimant proceeds pro se, he must complete and return a CM/ECF Pro Se Notification form **no later than December 14, 2020**.

IT IS FURTHER ORDERED that the Clerk of Court send a copy of this Order and a CM/ECF Pro Se Notification form to Claimant Lucas Alves at lucasdalves@gmail.com.¹

IT IS FURTHER ORDERED that the Clerk of Court send a copy of this Order to Mr. Herrick (1) by email to pssherrick@gmail.com, [Doc. 7-3] at 1, and (2) by United States mail to 4324 Bayshore Boulevard NE in St. Petersburg, Florida, 33703, [Doc. 4] at 3.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge

¹ This email address appeared in the exhibits to the United States' Motion to Compel. [Doc. 7-4] at 1.